

m/003/031

3/25/97

BEFORE THE DIVISION OF OIL GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

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IN THE MATTER OF THE APPEAL	:	FINDINGS OF FACT,
OF AGENCY ACTION TO ENFORCE	:	CONCLUSIONS OF LAW
VIOLATED MINERALS RULES,	:	AND ORDER
UTAH BUILDING STONE SUPPLY,	:	
GROUSE CREEK OPERATIONS,	:	CAUSE NO. M/003/031
BOX ELDER COUNTY, UTAH.	:	
	:	

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On February 27, 1997, the Division of Oil, Gas and Mining ("Division") held an Informal Hearing concerning the Notice of Agency Action dated January 21, 1997 issued to William and Preston Bown, Utah Building Stone Supply to enforce Utah Minerals Rules at the Grouse Creek Operations located in Box Elder County, Utah. The following individuals attended the Informal Conference:

Presiding:	James W. Carter Director
Petitioners:	William Bown, Preston Bown, Utah Building Stone Supply
Division:	Wayne Hedberg Lynn Kunzler
Bureau of Land Management:	Mike Ford
School & Institutional Trust Lands Administration:	John Blake

DISCUSSION OF THE ISSUES

The Division's Notice of Agency Action dated January 21, 1997 asserts that Utah Building Stone Supply (UBSS) "presently has no mine permit, DOGM approval, or legal right to conduct mining operations at the Grouse Creek Quarry." The notice goes on to direct, "You are hereby directed to suspend all mining activities at this site until you acquire an approved Large Mining Operation Notice of Intention from this office." The Division cites R647-3-113 Mine Enlargement; R647-4-101 Filing Requirements and Review Procedures; and R647-4-107(6) Operation Practices - Concurrent Reclamation, as regulatory authority for its actions.

The core issues in this dispute are, 1) whether UBSS's Grouse Creek operations constitute "Mining Operations" as defined by the Utah rules, and 2) whether the Grouse Creek operations have a "Disturbed Area" exceeding five acres in size. The Grouse Creek operations are taking place on a series of unpatented mining claims on federal lands and two State minerals leases. The parties agree that the current activity at the Grouse Creek operation is the hand removal of stones from several talus slopes ("Quarry Areas" on the attached Exhibit 1) in the operation area, and placement in highway-licensed vehicles for transport off the site.

UBSS argues that it is not conducting mining operations at the Grouse Creek site, notwithstanding its mining claims and minerals leases, but is instead engaged in "casual use" as defined by the regulations of the Bureau of Land Management, which does not involve the use of heavy equipment. UBSS argues that since they are currently using licensed highway vehicles to drive over a network of publicly accessible roads to pick up and remove stones

An operator who constructs a road for access to its minerals operations cannot avoid responsibility for the road by allowing the public to obtain a prescriptive right to use of the road, or even by conveying an interest in the road to another entity. Once constructed for mining purposes, roads remain disturbed areas subject to regulation. The public use or ownership of mining roads bears only upon whether and under what circumstances they will be reclaimed at the cessation of mining operations. To allow a miner to construct access to his ore body and then disclaim responsibility for that access would allow the miner to disclaim responsibility for the drift which leads to the working face of an underground mine. Regulation of mining roads by the Division and use of those same roads by the public are not inconsistent or mutually exclusive.

The following Findings, Conclusions, and Order in this matter are based on information provided by the Division and the Petitioners in connection with this Informal Hearing, and on information contained in the files of the Division.

FINDINGS OF FACT

1. Notice of this hearing was properly given.
2. The construction and maintenance of the roads depicted on the attached Exhibit 1 as "Quarry Access Roads" and the current extraction of mineral materials at the Grouse Creek operations constitute a continuum of mining operations as defined by the Utah minerals rules.
3. The roads depicted as Quarry Access Roads on attached Exhibit 1, together with the areas depicted as Quarry Areas on attached Exhibit 1 constitute the disturbed area of

the Grouse Creek operations within the meaning of the Utah minerals rules. The disturbed area of the Grouse Creek operation exceeds five acres.

CONCLUSIONS OF LAW

1. The activities conducted by Utah Building Stone Supply at the Grouse Creek operations constitute large mining operations under the Utah minerals rules, and require the filing and approval of a Notice of Intention to Commence Large Mining Operations pursuant to the requirements of R647-4.

ORDER

NOW THEREFORE, it is ordered that:

1. The Order of Suspension of operations contained in the Notice of Agency Action dated January 21, 1997 shall remain in effect until UBSS acquires an approved Large Mining Operation Notice of Intention from the Division. Continued removal of mineral materials at the Grouse Creek operations will constitute a willful violation of the Utah Mined Land Reclamation Act.

2. The Petitioner may appeal these Findings, Conclusions and Order to the Board of Oil, Gas and Mining by filing an appeal within 30 days of the date of this Order, in accordance with statutory and regulatory requirements.

SO DETERMINED AND ORDERED this 25th day of March, 1997.

STATE OF UTAH
DIVISION OF OIL, GAS AND MINING



James W. Carter, Director

CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing Findings of Fact, Conclusions of Law and Order for Utah Building Stone Supply's Grouse Creek Large Mining Operation to be mailed by first class mail, postage prepaid, the 26th day of March, 1997 to:

CERTIFIED RETURN RECEIPT

P 074 976 573

William Bown
Utah Building Stone Supply
842 West 400 North
West Bountiful, Utah 84087

William and Preston Bown
Utah Building Stone Supply
842 West 400 North
West Bountiful, Utah 84087
(along with original maps)


Mike Ford
Bureau of Land Management
Salt Lake District Office
2370 South 2300 West
Salt Lake City, Utah 84119

DEPARTMENT MAIL:

John Blake
School and Institutional
Trust Lands Administration
675 East 500 South, Suite 500
Salt Lake City, Utah 84102

Copies also to:

James W. Carter, Director, DOGM
Lynn Kunzler, Senior Reclamation Specialist, DOGM



Joelle Burns, Secretary